

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

WENDELL COLLUM,

Plaintiff,

v.

ASTRAZENECA PHARMACEUTICALS, L.P.  
et al.,

Defendants.

No. C-06-0662 SC

ORDER DENYING  
DEFENDANTS' MOTION TO  
STAY ACTION

AND

GRANTING PLAINTIFF'S  
MOTION TO DISMISS  
ACTION WITHOUT  
PREJUDICE

Plaintiff Wendell Collum moves the Court to dismiss his action without prejudice under Local Rule 7-11 and Federal Rule of Civil Procedure 41(a)(2). Defendants move the Court to stay the action pending transfer to multidistrict proceedings.

The Court GRANTS Plaintiff's motion to dismiss without prejudice and DENIES Defendants' motion to stay.

**I. BACKGROUND**

On January 30, 2006, Plaintiff filed his Complaint against Defendants. See Complaint for Negligence, Fraud, Failure to Warn, Strict Product Liability and Breach of Warranty. On June 19, 2006, Defendants filed their Answer. See Answer and Affirmative and/or Separate Defenses of Astrazeneca Pharmaceuticals LP and

1 Astrazeneca L.P. To Plaintiff's Complaint. Excluding the instant  
2 motions before the Court and their associated responses, there  
3 does not appear to have been any other significant activity by the  
4 parties in the case.

5 On August 2, 2006, a conditional transfer order was filed  
6 which listed the instant action. See Conditional Transfer Order  
7 (CTO-61, CTO-3), MDL-1569 - In Re Zyprexa Products Liability  
8 Litigation, MDL-1769 - In Re Seroquel Products Liability, Docket  
9 Nos. 1596 and 1769, Schedules CTO-61 and CTO-3 (Aug. 2, 2006)  
10 ("Conditional Transfer Order"). The Conditional Transfer Order,  
11 however, is just that, conditional, and thus this Court retains  
12 jurisdiction over the instant action, including any related  
13 pretrial motions, under Rule 1.5 of the Rules for Multidistrict  
14 Litigation. See 199 F.R.D. § 425 ("The pendency of a motion,  
15 order to show cause, conditional transfer order or conditional  
16 remand order before the Panel concerning transfer or remand of an  
17 action pursuant to 28 U.S.C. § 1407 does not affect or suspend  
18 orders and pretrial proceedings in the district court in which the  
19 action is pending and does not in any way limit the pretrial  
20 jurisdiction of that court.").<sup>1</sup>

21 **II. PLAINTIFF'S MOTION TO DISMISS WITHOUT PREJUDICE**

22 When ruling on a motion for voluntary dismissal, the Court is  
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24 <sup>1</sup> For the sake of clarity, the Court notes the terms "motion"  
25 and "order to show cause" as used in Multidistrict Litigation Rule  
26 1.5 refer to motions and orders to show cause which are before the  
27 Judicial Panel on Multidistrict Litigation. They do not refer to  
28 motions or orders to show cause, such as the instant motion, which  
are before the district court in which a potentially transferred  
action was filed.

1 required to "consider whether the defendant will suffer some plain  
2 legal prejudice as a result of the dismissal." Hamilton v.  
3 Firestone Tire & Rubber Co., 679 F.2d 143, 145 (9th Cir. 1982).  
4 However, as Hamilton makes clear, "[p]lain legal prejudice does  
5 not result simply when defendant faces the prospect of a second  
6 lawsuit or when plaintiff merely gains some tactical advantage."  
7 Id. Rather, it is created when, for example, "extensive  
8 discovery" and "intensive preparation for trial" have already been  
9 conducted by the defendant, or when the claims to be dismissed are  
10 inextricably linked to those which would remain. Kern Oil  
11 Refining Co. v. Tenneco Oil Co., 792 F.2d 1380, 1390 (9th Cir.  
12 1986). And even then, a significant showing of such factors must  
13 be made. Id.

14 Defendants' opposition to Plaintiff's motion for voluntary  
15 dismissal without prejudice makes no attempt at such a showing,  
16 but rather only describes the case's status before the MDL Panel.  
17 See Defendants Astrazeneca Pharmaceuticals LP and Astrazeneca LP's  
18 Opposition to Plaintiff's Motion for Administrative Relief.  
19 Plaintiff's motion for voluntary dismissal of his action without  
20 prejudice is, therefore, GRANTED.

### 21 **III. DEFENDANTS' MOTION TO STAY**

22 In determining whether to grant a stay, the Court considers  
23 the following factors: "(1) potential prejudice to the non-moving  
24 party; (2) hardship or inequity to the moving party if the action  
25 is not stayed; and (3) the judicial resources that would be saved  
26 by avoiding duplicative litigation if the cases are in fact  
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1 consolidated." Rivers v. Walt Disney Co., 980 F.Supp. 1358, 1360  
2 (C.D. CA. 1997).

3 Defendants do not discuss the second element in terms of the  
4 hardship or inequity which they would experience absent a stay,  
5 but rather the "prejudice" they would suffer, "[i]f individual  
6 district courts," including this Court, "allowed cases to  
7 proceed." See Defs' Mot. at 4 (emphasis added). Setting aside  
8 that prejudice is not what Defendants needed to show, see Rivers,  
9 980 F. Supp. at 1360, this argument fails for the obvious reason  
10 that the only thing that would be stayed if the Court granted  
11 Defendants' motion would be the Plaintiff's motion which seeks to  
12 stop the case from proceeding.

13 Defendants further claim that granting the stay would  
14 "promote judicial economy." Id. at 3. The Court finds this  
15 argument not only unavailing, but ironic, in light of the  
16 duplicative nature of the instant motions before the Court when  
17 viewed in relation to one another and in the context of this  
18 Courts' past orders in related cases.

19 Finally, Plaintiff convincingly argues that he would be  
20 prejudiced if he were forced into a court on the other side of the  
21 country solely for the purpose of litigating his motion to dismiss  
22 his action against Defendants. See Pl.'s Opp. at 2-3. The Court  
23 has difficulty imagining a greater waste of not only judicial  
24 resources, but also party resources and even natural resources  
25 used to fly the parties, their representatives, and their  
26 materials across the country for this purpose.

27 Defendants' motion for a stay is, therefore, DENIED.  
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1 **IV. CONCLUSION**

2 For the foregoing reasons, Plaintiff's motion to dismiss  
3 without prejudice is GRANTED, and Defendants' motion for a stay is  
4 DENIED. Accordingly, this action is DISMISSED WITHOUT PREJUDICE.

5 IT IS SO ORDERED.

6 Dated: August 29, 2006

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UNITED STATES DISTRICT JUDGE  
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